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Do homeowners need protection from lenders?
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Under federal law, people shopping for home mortgage loans are largely responsible for protecting themselves.

The main limit on the interest rate and fees is the borrower's willingness to pay.

A study released last week underscored that the system is not working for everyone. The Center for Responsible Lending, a Durham nonprofit that critiques the industry, found blacks and Hispanics are more likely to pay high interest rates for mortgage loans than whites with similar financial circumstances.

But even before its release, a bipartisan group in Congress was meeting quietly to discuss new rules for the lending industry, rules to inhibit lenders from leading borrowers into bad choices.

The most dramatic proposal would transform the relationship between customers and the independent brokers who sell most loans: It would make the brokers represent the interests of the customers.

Other ideas focus on regulating the terms of loans, and limiting the fees charged by lenders and brokers.

The negotiators, including N.C. Democrats Mel Watt of Charlotte and Brad Miller of Raleigh, say the discussions could end a years-long deadlock over how to regulate the mortgage lending industry, and particularly the fast-growing "subprime" business of lending at high interest rates.

"We've been quietly trying to find common ground," Watt said. The new study, he said, "will increase the pressure to do something in this area."

Rep. Spencer Bachus, an Alabama Republican who chairs a subcommittee of the House Committee on Financial Services, is the driving force behind the negotiations. He is trying to mediate between a bill favored by Miller, Watt and consumer advocates, and a bill favored by several Republican legislators and the lending industry.

Observers say the prospects for a compromise were bleak until Bachus got involved. A spokeswoman for Bachus said he hoped to hold a "mark-up" session where a compromise bill would be discussed later this month.

That would be the first of many steps required to change the law. It will be difficult not least because the discussion is brimming with emotion.

For many loan sellers, the idea that discrimination is widespread -- and that they require additional regulation -- is personally offensive. The industry has argued that borrowers are responsible for educating themselves, and for shopping around to find the best rate.

"The only discrimination that occurs in the mortgage industry is against the lazy," Kyle Killian, a Charlotte loan seller, wrote in an e-mail. He said he considers only financial factors in lending decisions.

For many minorities, personal experience makes the opposite argument.

"I grow tired of the assumption that biased practices are the result of our collective inability to budget, get ready, think," said Tressie Cottom, a black Charlotte resident who said her mother was lured into a bad loan. "There is a higher cost associated with being black in this country."

Mortgage brokers' role

The discussions are focused heavily on the role of mortgage brokers, partially because they sell most high-interest loans, partially because the law says little about their role.The federal laws that govern the mortgage industry largely were written in the 1970s, when lenders sold loans directly to borrowers. Now lenders are mostly national companies that sell their loans through small, independent brokers.

Brokers can offer better rates than a lender will quote directly, and they can eliminate the hassle of shopping around. Studies sponsored by the industry show the average customer saves money by working through a mortgage broker.

But the government has found some brokers pad profits by rolling undisclosed fees into the cost of the loan. The Department of Housing and Urban Development estimated in 2002 that brokers overcharged customers by about $3 billion a year.

A Harvard study of the most common hidden fee, called a yield spread premium, found minorities were overcharged disproportionately.

"The broker is the one who knows what's going on," said Rep. Miller, who favors the idea of making brokers represent their customers. When brokers overcharge customers, "That is unconscionable to me and a real betrayal of trust by the broker."

A compromise proposal offered by lenders and consumer advocates, the groups on either side of the brokers, suggests a cap on the fees that brokers can charge. That would limit the cost to any individual, and reduce the opportunity for discrimination.

Both ideas have been strongly opposed by the National Association of Mortgage Brokers.

"I don't think that price controls are the American way of life," said Kate Crawford, an N.C. mortgage broker and a member of NAMB's board.

The brokers also have made clear they will oppose any law that does not focus equally on loans sold to customers directly by mortgage lenders.

"We are not going to be singled out as the only industry that would have certain restraints on our business practices," Crawford said.

State laws vary

In the absence of a federal law, many states have passed their own mortgage lending laws. The fate of those laws is another issue at the heart of the congressional discussions.

In 1999, North Carolina passed a predatory lending law still widely regarded as a national model. It restricted the sale of loans with the highest interest rates, and barred certain fees and restrictions on most loans. For example, it limited the use of prepayment penalties -- fees charged by lenders when borrowers attempt to repay a loan ahead of schedule. Such fees can prevent customers from refinancing to a lower interest rate.

Other states have adopted similar laws, but the efforts have created a jagged regulatory landscape for lenders. In recent years, they have pushed Congress to adopt a single national standard.

Consumer advocates and state regulators say any national law should not replace state laws, because states can respond faster to changes in the mortgage industry. Instead, they have pushed Congress to adopt a national law that would define minimum regulations, leaving states free to go further.

The recent negotiations began when Bachus suggested a compromise: A national law similar to North Carolina's, but still replacing the state laws. The discussions now center on areas that are ignored in the N.C. law. Among those areas is the thorniest: The role of mortgage brokers.

What This Means to Borrowers

A national lending law could add protections for people shopping for mortgage loans -- or it could replace an existing N.C. law with a weaker federal standard.

Ideas for Improvement

There are three basic ideas for protecting borrowers. A compromise bill would probably require some combination of these strategies:

- Regulate the product. Congress could restrict the types of loans that can be sold, or the fees that can be charged. A 1999 N.C. law is often cited as a possible model. It limits the terms of loans with high interest rates. It also bars certain fees, such as penalties for repaying a loan ahead of schedule.

  The problem: Most products on the market are suitable for at least some borrowers. Blanket restrictions would limit the availability of those loans, potentially reducing the ability of some people to buy homes or tap their equity.

- Regulate the seller. Congress could require mortgage brokers to serve the interest of the borrower, something that is already required of stock brokers, for example. Such a law could require the broker to find the best deal for a customer. Congress could also set national standards for brokers.

  The problem: Brokers say they work for both the lender and the borrower, so they cannot solely represent either party. They also say any law should apply equally to loan sellers employed directly by lenders.

- Educate the borrower. Congress could increase support for programs that teach borrowers to navigate the lending process. It could also reform the way loan prices are explained to borrowers, making the true cost of a loan easier to understand and easier to compare with other offers.

The problem: Consumer advocates say the interaction between an experienced lender and a borrower is inherently unequal. Education and disclosure, while important, are not sufficient by themselves.